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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Marcus Sharif McNeal,

Petitioner

v.

Jerry Howell, *et al.*,

Respondents.

Case No. 2:19-cv-00679-JAD-VCF

**Order Transferring Petition into
Case Number 2:16-cv-01618-JAD-EJY
and Dismissing this Action**

[ECF No. 9]

This habeas corpus action was initiated on April 17, 2019, by Marcus Sharif McNeal, a prisoner at Nevada's Southern Desert Correctional Center. On that date, McNeal filed a Petition for Writ of Habeas Corpus¹ and an Application to Proceed *in Forma Pauperis*.² On April 23, 2019, I granted McNeal *in forma pauperis* status and ordered his petition filed, but I summarily dismissed this action because McNeal already had another habeas action pending before me in which he challenges the same 2013 judgment of conviction: Case Number 2:16-cv-01618-JAD-EJY (the 2016 petition).³ I instructed McNeal that he needed to assert any challenge to his 2013 convictions in that already pending 2016 case.⁴

McNeal appealed,⁵ and the Court of Appeals vacated the judgment and remanded this case. It reasoned that I should not have dismissed the 2019 petition as duplicative but instead

¹ ECF No. 1-1.

² ECF No. 1.

³ ECF No. 3 (order); ECF No. 4 (judgment).

⁴ *Id.*

⁵ ECF No. 5.

1 treated the 2019 petition “as a motion to amend the 2016 petition. . . .”⁶ So, the appellate court
2 instructed me:

3 to transfer the 2019 petition to D.C. No. 2:16-cv-01618-JAD-GWF,⁷ and to
4 docket and consider it as a motion to amend the 2016 petition with the benefit of
5 its original filing date (April 17, 2019).⁸

6 The appellate court did not dictate how I should rule on that motion, instead explaining that:

7 The district court has the discretion to decide whether the motion to amend should
8 be granted. *Id.* We express no opinion as to the merit of that motion or
9 appellant’s claims.⁹

10 Therefore, in compliance with the Court of Appeals’ order, I direct the Clerk of the Court
11 to FILE a copy of the petition in this 2019 action¹⁰ in Case Number 2:16-cv-01618-JAD-EJY,
12 and docket and treat it as a motion for leave to amend McNeal’s petition in that 2016 case with
13 the benefit of its original filing date (April 17, 2019), and I will order this 2019 case dismissed
14 without prejudice.

15 IT IS THEREFORE ORDERED that **the Clerk of the Court is directed to FILE a copy**
16 **of the petition in this 2019 action¹¹ in Case Number 2:16-cv-01618-JAD-EJY and docket**
17 **and treat it as a motion for leave to amend McNeal’s petition in that 2016 case with the**
18 **benefit of its original April 17, 2019, filing date.**

19 IT IS FURTHER ORDERED that **this action is DISMISSED WITHOUT PREJUDICE.**
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22 ⁶ ECF No. 6 at 2.

23 ⁷ GWF are the initials of Magistrate Judge Foley, who has retired. His cases were reassigned to
24 Magistrate Judge Youchah.

25 ⁸ *Id.* at 2.

26 ⁹ *Id.*

27 ¹⁰ ECF No. 1-1.

28 ¹¹ ECF No. 1-1.

1 IT IS FURTHER ORDERED that the petitioner's motion for appointment of counsel
2 **[ECF No. 9] in this case is DENIED as moot.** The same request is also pending in the 2016
3 case and will be decided there.

4 IT IS FURTHER ORDERED that **the petitioner is denied a certificate of appealability**
5 because reasonable jurists would not find this order to be debatable.

6 IT IS FURTHER ORDERED that the Clerk of the Court is directed to ENTER
7 JUDGMENT accordingly and CLOSE THIS CASE.

8 Dated: October 30, 2019

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11 U.S. District Judge Jennifer A. Dorsey
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